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BY EMAIL

March 23, 2018

Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street, 27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Hydro One Networks Inc.  
Custom IR Distribution Rate Application, 2108-2022  
EB-2017-0049**

In accordance with Procedural Order No. 4, Ontario Energy Board (OEB) staff is providing its submissions on the confidentiality request filed by Hydro One Networks Inc. (Hydro One) regarding the working papers of the Hydro One consultant Power Systems Engineering (PSE), which were requested through an interrogatory filed by OEB staff (OEB staff IR #23(a)).

Hydro One filed detailed reasons for its confidentiality request on March 15, 2018. In summary, Hydro One cited three main reasons justifying confidential treatment of the PSE working papers:

- The working papers contain proprietary technical information which has commercial value to PSE. In past proceedings the OEB has treated such information as confidential. Hydro One cited a previous proceeding<sup>1</sup> where OEB staff made submissions in support of confidentiality of its consultant's materials which were similar to the PSE working papers in this case.
- The working papers contain raw data purchased from third party vendors who do not allow this raw data to be made publically available. Hydro One again cited the

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<sup>1</sup> EB-2014-0116

same proceeding as above and also noted that the current OEB staff consultant, Pacific Economics Group, agreed to protect such data as stated in the OEB staff IR23(a) as filed in this proceeding.

- The working papers fulfill the criteria given in Appendix A of the OEB's *Practice Direction On Confidential Filings* (revised October 28, 2016) in that disclosure of the proprietary data could prejudice PSE's competitive position and produce a significant loss to PSE; and disclosure of the third party vendor raw data would impede PSE's capacity to fulfill existing contractual obligations.

OEB staff wishes to make one comment regarding the second item above. OEB staff understands that PEG has agreed to maintain the PSE material in confidence.

However, the fact that two third parties have agreed to maintain material in confidence should not in itself be a basis for the OEB to require confidential treatment of the material. It is the OEB that determines whether material will remain in confidence in a given proceeding, and the OEB is not bound by arrangements with third parties.<sup>2</sup>

However, in the current proceeding, this is not Hydro One's only ground for requesting confidential treatment of the subject material. Having reviewed the detailed Hydro One submission, OEB staff accepts the reasons provided by Hydro One and submits that the working papers should be granted confidential treatment.

Yours truly,

*Original Signed By*

Harold Thiessen  
Ontario Energy Board staff  
Case Manager – EB-2017-0049

cc: All Parties, EB-2017-0049

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<sup>2</sup> For example, in a May 29, 2014 Decision and Order on Confidentiality in three distribution rate proceedings (EB-2013-0115, EB-2013-0159 and EB-2013), the OEB stated: "The Board recognizes that the distributors have non-disclosure agreements with MEARIE. However, as noted by this Board in previous decisions, applicants must be cognizant of the fact that it is up to the Board to determine confidentiality and that when regulated entities enter into confidentiality agreements with third parties that extend to the provision of information and documents, the utility knows or ought to know that they may reasonably be required to produce the documents as part of the regulatory process." See:

<http://www.rds.oeb.ca/HPECMWebDrawer/Record/439261/File/document>